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In the

SUPREME COURT OF THE UNITED STATES

October Term 1969

1185

John Meredith Tayler

Petitioner

vs.

Thessa Marie Tayler

Respondent

# PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF STATE OF MARYLAND

John Meredith Tayler
4714 Hunt Avenue
Chevy Chase
Maryland 20015

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF STATE OF MARYLAND

COMES THE PETITIONER and respectfully prays for a Writ of Certiorari directing the Court of Appeals of Maryland to REVIEW AND QUASH two Orders of the Circuit Court for Montgomery County, Maryland; respecting the custody of John CHRISTOPHER Sampson TAYLER, the eleven year old son of the parties.

Opinions below: None

GROUNDS OF JURISDICTION

Denial of due process and equal protection, constituting decision of federal questions of substance in a way not in accord with the applicable decisions of this Court under Amendment Fourteen.

Judgment sought to be reviewed by this Court

is denial of Certiorari (or alternative extraordinary relief) by Court of Appeals, entered on September 16, 1969.

Time was extended by the Chief Justice, on December 19, 1969, to February 13, 1970.

Orders sought to be reviewed and quashed by the Court of Appeals, on the direction of this Court: Award of Custody to Respondent (given on March 24, 1969) entered in Circuit Court on March 28, 1969, and Award of Custody to Montgomery County Department of Social Services, entered on July 23, 1969.

Statutory provision: U.S. Code 28. 1257 (3)

QUESTIONS PRESENTED FOR REVIEW

I May the Judge of a State Court refuse to hear a party at all, or allow him to call witnesses, or give his own evidence, on the matter of the custody of that party's son?

II May the Judge of a State Court make a change in the custody of a party's son, at a proceeding arranged on the Judge's own initiative, of which no notice is given to that party?

III May the Judge of a State Court exclude and evict a party from a hearing, at which custody of that party's son is awarded to the Welfare Department, there being no provo-

cation by the party, except attempting to walk into the Court Room?

IV May the Judge of a State Court, to whom a matrimonial cause has been assigned, prior to holding any hearing about custody, refuse to take notice of an outstanding Order of his own Court awarding custody to one of the parties pendente lite, and encourage the other party to deny the first party custody?

V If the Judge of a State Court tells a party entitled to Custody pendente lite that he may do no more than visit his son once a week, at the home of the other party, because he is not an American, and then later awards custody to the other party, is that award not in violation of Amendment Fourteen, since the Judge obviously never contemplated the possibility of awarding custody to the first party, whom he would not trust even to take his son out?

VI May the Judge of a State Court deny a party access to an Investigative Report, while making it available to the other party (being the party to whom he awards custody)?

VII May the Judge of a State Court refuse to allow a party to make representations as to the inaccuracy of an Investigative Report, on

the basis of which he awards custody to the other party?

VIII May the Judge of a State Court give decisions based on matters contained in an Investigative Report, which have not been raised in any pleading or evidence?

IX May the Judge of a State Court defeat the Constitution of the United States, by telling Court Reporters to omit from the record, without the consent of both parties, parts of the proceedings which bear, or may bear, on the Constitutional (or other) rights of one of the parties?

X May the Judge of a State Court discriminate against one of the parties, because that party is not a United States citizen?

XI May the Judge of a State Court discriminate against one of the parties to a custody case, because that party is a man rather than a woman?

XII May the Judge of a State Court discriminate against one of the parties, because that party chooses to appear on his own behalf, instead of handing his case over to Counsel?

CONSTITUTIONAL PROVISION

Amendment XIV: ... Nor shall any State deprive any person of life, liberty or property, without

due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

### Introduction

June 27, 1968: Respondent (Mother) abandoned Petitioner (Father) at matrimonial home in Maryland. She took Christopher (son of the parties), then aged ten, with her and effectively hid him from Father, with the connivance of her family, who live in D. C.

September 10, 1968: Father, on Christopher's behalf, presented petition to U.S. Senate and House of Representatives.

September 13, 1968: Father filed suit in Circuit Court for Montgomery County, praying for such custody arrangements as would be in Christopher's best interests.

September 18, 1968: Father, having located Christopher in D.C., started Habeas Corpus proceedings there, with a view to getting boy back into Maryland jurisdiction.

September 30, 1968(morning): D.C. Habeas Corpus Writ served on Mother, while she was conducting Christopher from Maryland, through D.C., to Virginia.

September 30, 1968 (evening): Father discovered Christopher at weekly boarding school near Leesburg, Va., where Mother had placed him under an assumed name. Mother thereupon had the School get the Loudoun County Juvenile & Domestic Relations Court to give custody (without hearing Father) first to the School and later to the County Welfare Department. Both custodians acted as nominees for Mother, who brought boy to D. C. whenever school was not in session, and who removed him from the school altogether before Christmas, but Father was led to believe that Christopher remained in Loudoun County.

October 3, 1968: On return of the D. C. Habeas Corpus, Father, Mother and Mother's first Counsel signed Consent Order, which was entered by Judge Ryan, acknowledging Md. jurisdiction and undertaking to accept service of Father's Montgomery County Circuit Court suit.

October 9, 1968: Father's Maryland suit (filed on September 13, 1968) served on Mother's first Counsel.

October 18, 1968: Mother failing to appear, Judge Pugh of Montgomery County Circuit Court gave Father custody pendente lite.

October 22, 1968: Father petitioned Loudoun

County Circuit Court for full faith & credit, but Juvenile Court Judge Rollins decided to deny this. Mother's reason for not having appeared in Rockville was that she thought she was doing better in Leesburg. Judge Snead of Loudoun County Circuit Court later backed Judge Rollins, denying full faith & credit out of hand.

October 31, 1968: After discussion with the Leesburg Judges, Mother's first Counsel filed Bill of Complaint against Father for divorce, in Circuit Court for Montgomery County. This was denied by Judge Shure, on March 24, 1969 (order entered on March 28), at close of Mother's case, on Father's motion. Mother did not appeal.

November 21, 1968: Mother enjoined by Judge Pugh (Montgomery Circuit Court) from interfering with delivery of custody to Father. Neither this Injunction nor the Father's Award of Custody pendente lite was ever vacated or rescinded, but the Custody Order was never implemented.

December 3, 1968: Injunction served on Mother's first Counsel, as per Judge Pugh's Order.

December 27, 1968: On learning that Christopher

was in D. C., not Loudoun County, Father obtained fresh Habeas Corpus Writ from Judge Ryan of D. C., with a view to getting full faith & credit for his Maryland custody Order. In his petition for the Writ, Father undertook to make adequate arrangements for Infant Petitioner to associate with his Mother as well as his Father.

January 7, 1969: D. C. Habeas Corpus was blocked by private arrangement between Mother's first Counsel and Judge Atkinson, on pretext that Father had not appeared, though Father had in fact appeared before Judge Atkinson in due time. Details of this private arrangement form part of the record of Case No. 4898 in the D. C. Court of Appeals and the matter has also been reported to the Acting Chairman of the D. C. Judicial Council. The express purpose of the arrangement was to facilitate a hearing in the Loudoun County Court, on January 14, 1969, at which there would be a direction inconsistent with the outstanding Montgomery County Order, and therefore inconsistent with the D. C. Consent Order of October 3, 1968, which acknowledged the Maryland jurisdiction.

January 14, 1969: Christopher was brought into Virginia from D. C., and then brought

back again the same day, for the purpose of a proceeding before Judge Anna Hedrick of the Loudoun County Court. Judge Hedrick said she did not want to prejudice the proceedings in Montgomery County, but she gave custody to the Mother, on various conditions, all of which have been flouted by the Mother and her family.

Proceedings before Judge Shure

February 27, 1969: Circuit Court for Montgomery County: Certified Copy of Docket reads as follows: 'Hearing on divorce a mensa et thoro (Mother's plea) before Judge Shure - Mrs. Kiebler reporting - Continued to March - Defendant (Father) is permitted to see child once a week in wife's home.' This Docket entry is corroborated by the partial transcript of Mrs. Kiebler (filed herewith), which shows that Judge Shure refused to respect the outstanding award, entered on October 18, 1968, by his brother Judge Pugh, giving the Father custody pendente lite, for the sole reason that the Father was a non-American. Judge Shure later told the Legal Adviser to the U.S. Secretary of State, who inquired on behalf of the British Embassy, that the pendente lite custody order was invalid, because the Father had failed to take some step

to perfect it. This was untrue. It is submitted that this incident is in itself, having regard to the terms of Question V above, a sufficient violation of Amendment Fourteen to vitiate all the subsequent custody proceedings before Judge Shure.

March 24, 1969: Certified Copy of Docket reads as follows: 'Hearing on Divorce a mensa et thoro resumed - Mrs. Kiebler reporting - At close of Plaintiff's (Mother's) case - Defendant's motion to dismiss and motion granted - ..... - Hearing on Custody..' There was in fact no hearing on the custody issue. The Order entered on March 28, 1969, pursuant to this proceeding of March 24, states that all things had been heard and considered. This is incorrect. The Mother did not need to be heard on the custody question, since custody was awarded to her. The Father was not permitted to be heard, or call witnesses, or give evidence himself, or question the Court's Investigator. Father had not, of course, been heard on merits of Mother's divorce plea, since it had been denied, on his motion.

March 26, 1969: Father met the Court Reporter, Mrs. Kiebler, and ordered transcript of the custody proceedings. Mrs. Kiebler's notes, which she read to the Father, on that occasion,

show that Father, on March 24, strenuously protested against the denial of a hearing. Paragraph 3 of Father's petition to the Chief Justice of December 15, 1969 showshow the Father's efforts to get delivery of the transcript of the March 24 proceeding (apart from a short extract respecting visitation, which was supplied by Mrs. Kiebler on March 26) have been thwarted. The record shows that the Father had applied for subpoenas for a number of witnesses. Judge Shearin had instructed that these would be issued as soon as the date for the custody hearing had been established. Judge Shure's Secretary had stated that the custody question was not expected to be dealt with on March 24.

March 27, 1969: Father filed petition (described in the Docket as Petition for Reconsideration) raising the federal questions which are now sought to be reviewed, referring to the lack of any kind of a hearing on the custody or visitation issues and praying for postponement of entry of any Order on these issues. This petition was presented to Judge Shure.

March 28, 1969: The Court of first instance passed on the petition of March 27 by entering, on Judge Shure's directions, the custody order given on March 24, without paying any attention

to the petition of March 27, and later (on July 23, 1969) by holding a custody hearing of which the Father was not given notice, and by evicting the Father from the Court Room, when he tried to attend.

April 27, 1969 (Sunday): Father filed petition in Maryland Court of Appeals for certiorari (or alternative extraordinary relief), by mailing by special delivery (receipt filed herewith), at Bethesda Post Office, north window, at 12.45 (noon).

April 29, 1969: While visiting Christopher at Mother's family's home, pursuant to Judge Shure's Order, Father was arrested and had his hands handcuffed behind his back by Officer Benedict of the D.C. Police, in Christopher's presence (with whom Father was playing scrabble on the floor), as arranged by Mother and her family. The charge on which Father was arrested was dismissed, with prejudice, on September 24, 1969, by Judge McIntyre, and the warrant was rescinded, ex post facto, on January 15, 1970. Mother and her family have over and over again tried to get Father arrested, in order to keep Father away from Christopher and from the Mother's family's home.

July 16, 1969: Father filed motion in Circuit Court to be allowed to receive copy of the Court Investigator's Report, make representations as to its inaccuracy, etc. This was denied by Judge Shure on July 18, 1969. Part of Father's motion reads as follows: 'The Court owes it to the minor child of the parties to give the Father full credit for the qualities and advantages from which the child can benefit when he associates with his Father.' Now, in the Father's absence, on July 23, 1969 (as appears from the partial transcript filed herewith) Judge Shure remarked that both parents left much to be desired, in his opinion, and neither parent was the kind of custodian he would like the young man to have. This has never been said by anybody, before or since, and is most unreasonable, in the circumstances, in the Father's submission.

July 23, 1969: Judge Shure gave and entered a 'Memorandum and Order', first finding the Mother in contempt of Court, and secondly transferring custody to the Department of Social Services for Montgomery County. Christopher had been supposed to spend the summer with Dr. & Mrs. Andre Hellegers, neighbours of the Father (an arrangement of which the Father approved), but the Mother had refused to hand Christopher over. No

notice of this proceeding of July 23 was given to the Father. The Order starts 'Hearing was had this date, pursuant to Order of July 15, 1969, directed to Thessa Marie Tayler.' The Docket shows no order of July 15, but an Order of July 16, 1969 (directing Mrs. Tayler to appear on July 23, with Christopher) is marked with an instruction to serve Mrs. Tayler, but nobody else. The Order of July 16 says nothing about any proposed change of custody hearing. The Father had expected there would be a contempt hearing, and ascertained the date from the Assignment Office, since he wanted to hear everything said in the case. When the Father walked into the Court Room, Judge Shure, who had just entered, told the Deputy Sheriff, 'Remove Mr. Tayler,' which the Deputy did (in the presence of the Court Reporter, Miss Carol E. Duncan, the Court Clerk, the Mother's (first) Counsel and Mrs. Dillow of the Department of Social Services, among others. The Order of July 23 shows that '.... matters within the personal knowledge of this member of the Court were dictated into the record.' The Father was unable to obtain the transcript of these 'matters' (or even get Miss Duncan to read her notes to him) until September 1969, and the identity of the Mother's new Counsel (John B. Cullen Esq.)

was witheld from the Father until then. The transcript then delivered (and filed herewith) shows that, prior to the proceeding of July 23, Judge Shure had had a private telephone conversation with the Mother's Father (as well as with the new Counsel, Mr. Cullen). The Father's efforts to obtain from Miss Duncan a record of the eviction from the Court Room are described in paragraph 3 of his petition of December 15, 1969 to the Chief Justice. The transcript of the 'matters' above referred to was apparently approved by Judge Shure, before being issued, which was one of the reasons for the delay in issuing it and Miss Duncan's refusal to read it to the Father. This transcript purports to show that the Father appeared at the proceeding of July 23, in spite of the fact that he had received no notice thereof. It is, however, clear from the transcript itself that Judge Shure did not intend the Father to be present and that he was not present. Immediately after being evicted from the Court Room, the Father petitioned the Administrative Judge Matthias, in a personal interview, at which were raised the federal questions now sought to be reviewed. No action was taken, in spite of a follow up letter to Judge Matthias. When Mr. Cullen's

identity was discovered, in September, the Father established contact, with the help of the Mother's brother. When the Father first called to see Mr. Cullen, he had a copy of the Investigative Report before him, and seemed to be much prejudiced against the Father by it. While the Father cannot speak for Mr. Cullen, he believes Mr. Cullen is no longer prejudiced against him, now that he has established some acquaintance with the Father. Mr Cullen has since referred the Father to the Circuit Court for a copy of the Report. The transcribed statement of Judge Shure shows that a copy of the Report was given to the Department of Social Services. The Mother's first Counsel is also believed to have been supplied with the Report, though the Father was told otherwise by Judge Shure.

August 22, 1969: Father filed second petition in Maryland Court of Appeals, for certiorari (or alternative extraordinary relief) and for reconsideration of his first such petition.

September 16, 1969: Court of Appeals denied Father's two petitions, without giving reason or opinion.

January 6, 1970: Father filed motion to the Chief Justice for Order with respect to Trans-

cripts, stating that the Court Reporters above named were believed (for the reasons appearing in the Father's petition of December 15) to have no present intention of providing the material needed for the Petition to this Court, that is to say records of the eviction from the Court Room (July 23, 1969) and the denial of the Father's claim to be heard (March 24, 1969).

January 27, 1970: Father filed in the Court of first instance a similar motion with respect to the missing transcripts, addressed to Judge Shook, as Chief of the Sixth Judicial Circuit. Judge Shook signed an order denying an extension of time to file appeal transcripts. Father filed a motion for clarification of the record, pointing out that his first motion had not been for an extension of time, and also a motion that he be given access to the Investigative Report. Judge Shook sent both these motions to Judge Pugh, who sent them back to Judge Shook, who then sent them to Judge Shure, who has apparently not acted on them.

January 28, 1970: Father filed similar motions with respect to the transcripts and the Report in the Appellate Court. These were denied on February 11, 1970. The federal questions to be reviewed were raised in the Appellate Court in the petitions of April 27 and August 22, 1969.

ARGUMENT FOR ALLOWANCE OF THE WRIT

What has happened to Christopher is a disgrace to a civilised society. He is a fine and essentially healthy boy, whose only serious problem is the help and encouragement given by various authorities to the break up of his family.

Christopher's parents still love each other. They have always had a sophisticated understanding of the problems resulting from their different backgrounds. The Mother's family, lacking these insights, has been allowed to exploit the fact that their daughter has been in a difficult phase. Her father has brazenly abused his many influential acquaintanceships.

The Mother would not have left the Father if she had not been assured, in advance, by her first Counsel, that she could get away with it and still keep Christopher. She would have come to terms with the Father, if judicial officers had not then, in effect condoned and abetted Christopher's abduction and secretion.

The Mother and her family have witheld from Christopher, for two years, the medical assistance which was professionally prescribed for him.

Christopher has been prevented from seeing his Father for twenty months, except

for an occasional supervised visit. Father and son have not been allowed to meet at all for the last seven months. The natural role of a father is to protect a growing son from undue closeness to his mother, such as was professionally diagnosed two years ago.

The stealing of Christopher, which was unprovoked by his Father, was a grossly immoral act on the part of the Mother and her family. When the Father located his son, the Mother and her family presumed to put the Father on trial. They have disseminated an extravagent and reckless mixture of fantasy and falsehood, which has fooled many, including Christopher. The Father's fitness has never been impugned in any evidence or pleading, but the Courts have been manipulated by private conversations and reports. This gives a terrible impression of the quality of American democracy.

The Mother's first Counsel systematically approached all the Judges privately, in advance of scheduled hearings. He imparted the family's reckless fantasies and falsehoods to the Bench, even while having no personal belief in their truth. Various Judges have thus been induced to proceed in a manner unworthy of their best selves, because they have been

actuated by false assumptions. Judge Shure has denied the Father's repeated requests to be present at the Judge's meetings with opposing Counsel of to be received by the Judge in their presence.

The Mother and her family have gotten their reckless falsehoods and fantasies incorporated in the Investigational Report - and received them back with the seal of the Court's approval!

The Court's Investigator has also acted as a disseminator of the reckless material.

In open Court, on July 1, 1969, Judge Shure stated that it was really the grandparents who have custody, that he wanted to get Christopher away from them for a while, and that he had received calls on their behalf to an extent which was embarrassing. The Judge instructed the Court Reporter, Mr. Kmetz, not to record certain passages on that day.

The award of custody to the Montgomery County Department of Social Services has never been enforced. The only effect of the order (almost as if it had been so designed) is to rule out any association between father and son at the former's Maryland home. The Father feels there is a better chance of his protecting Christopher when there is no custody order, but equal

parental responsibility, which is the situation in D.C., where Christopher now is. The Father does not therefore seek further dealings with the Courts, at this time, apart from the quashing of the two unconstitutional awards of March 28 and July 23, 1969. Before the Maryland Courts took further action thereafter, the Father would expect them to try and implement his Order of Custody pendente lite, to which no legal exception can properly be taken. This would help the Father to make the arrangements which Christopher needs and which, as the record shows, would include living with his Mother, subject to her reasonable cooperation.

This petition is presented without prejudice to the Congressional Petition, presented on September 10, 1968, and exhibited to the petition of December 15, 1969 to the Chief Justice. The Father would prefer to keep his family's affairs private, but will feel bound to promote the Congressional Petition (which is in part an appeal to the force of enlightened opinion), if a settlement is not swiftly reached on terms favourable to Christopher.

There is no excuse for feelings of animosity between the Father on the one hand and the Mother and her family on the other.

These are the two elements which constitute Christopher himself and he is entitled to pursue his own development, untroubled by self-indulgent feuds on the part of his older generation. As an only child, he has a particular need for a sense of peace between the two components of his make up.

Those who are acquainted with the Mother's family, whether within the Supreme Court or outside it, are urged to impress on the family that it is their duty to put aside past grievances and fears, real or imagined, to give the Father access to their home for the purpose of redeveloping a regular and relaxed association with his son and his son's affairs, and to treat the Father with courtesy and friendly cooperation, at all times, for Christopher's sake. Each member of the family is fully capable of adopting these attitudes forthwith.

CONCLUSION

WHEREFORE Your Petitioner, having shown that he and his son, Christopher, have been unconstitutionally deprived of their natural liberties, and relying on both his and his son's rights to equal protection of the laws, respectfully prays for a Writ of Certiorari directing the Court of Appeals of the State of Maryland to review and quash the above described Orders of the Circuit Court for Montgomery County, Maryland, respectively entered on March 28 and July 23, 1969, insofar as they affect Christopher's custody (without, however, quashing Judge Shure's rescission, in the order of July 23, of his previous order of June 20, 1969, which gave Christopher to Dr. & Mrs. Hellegers for the summer of 1969 and which is admitted to be no longer applicable).

Your Petitioner further prays for Orders with respect to the missing transcripts, including that of July 1, 1969, and that he may be given copies of all Reports and permitted to submit material in rebuttal of any adverse portions thereof.

Your Petitioner relies on his petitions herein to the Chief Justice of the United States and the exhibits thereto.

Respectfully submitted

John Meredith Tayler
4714 Hunt Avenue, Chevy Chase, Maryland

I HEREBY CERTIFY that, on the twelfth day of February 1970, before me, the undersigned, personally appeared John Meredith Tayler, the petitioner within mentioned, and made oath, in due form of law, that the matters and facts herein set forth are true, to the best of his knowledge and belief.

Notary Public, ~~Montgomery County,~~ Prince George Maryland

My commission expires 7/1/70

NOTARY PUBLIC PRINCE GEORGES CO., MD.

I hereby certify that true copies of the within written petition were served, on the thirteenth day of February 1970, by mailing, postage prepaid, to John B. Cullen, Esquire, of 1511 K Street, N. W., Washington, D. C., and also to the Department of Social Services for Montgomery County, Maryland, 5630 Fishers Lane, Rockville, Maryland (the latter Department not, however, being a party to the proceedings below).

John Tayler